



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459


Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: June 7, 2013

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development 
James Freas, Chief Planner, Long-Range Planning

RE: #95-11: ALD. HESS-MAHAN proposing an ordinance requiring that a notice of conversion to condominium ownership be filed with the Inspectional Services Department and that the property be inspected to determine compliance with all applicable provisions of the state and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies.

#102-11: ALD. HESS-MAHAN, JOHNSON, COMMISSIONER LOJEK & CANDACE HAVENS requesting an amendment to Chapter 17 to establish a fee for filing a notice of condo conversion.

MEETING DATE: June 10, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor
John Lojek, Commissioner, Inspectional Services Department

INTRODUCTION

Petition #95-11 and 102-11 propose to create a new regulation requiring a property inspection in conjunction with the conversion of an existing multi-unit residential lot in single ownership (typically a rental property) into condominium ownership in which each unit is individually deeded and owned. The proposed regulation would require notice to the City and a City inspection of the property as part of the conversion process with a fee to help cover the cost of this service. The two petitions were approved by ZAP on June 13, 2011 and referred to the Finance Committee for their consideration of

the proposed fee. The Finance Committee referred both items back to the Zoning and Planning Committee.

BACKGROUND

These two petitions, and a third, #94-11, which was approved by the Committee and adopted by the Board of Aldermen, were originally submitted and considered in the context of a specific issue, that of an accessory apartment in a single-family residential district that had been converted to condominium ownership. Petition #94-11 addressed the definition of an accessory apartment in order to clarify that such an apartment was considered to be a use, subordinate to the primary single-family or two-family use of a given property. The language developed to address this issue is now incorporated into the Newton Zoning Ordinance. The remaining two petitions were referred to the Finance Committee where issues were raised relative to the appropriateness of the proposed regulation.

The question raised by the Finance Committee: What differentiates the sale of a condo unit in the context of a condo conversion from the sale of any other housing unit, whether it is a previously created condo or a single-family home, such that a special notice to the City and an inspection by ISD become necessary? This question relates closely to one of the fundamental issues associated with the proposed regulation and discussed in the Planning Department memo on this item from the June 13, 2011 meeting (Attached); that is the City can regulate land use and the form of development but not ownership. If ownership is outside the purview of the City, it should not matter what type of ownership was in place prior to the sale of a converted condo and therefore, should potentially have no significant difference between such a sale and any other transfer of property in the City requiring special notification and inspection.

ANALYSIS

Many municipalities require property owners converting multi-unit properties to condominium ownership to submit notice and allow for an inspection. There are three primary reasons for such a condo conversion regulation:

1. **Legality** – As has been discussed previously, the City cannot regulate the ownership of units, only the use. In some cases though, the conversion to condo ownership does constitute a change in use, as in the case of accessory apartments. Even with the clarification previously adopted, there are likely properties in the City where a property owner may seek to convert an accessory unit to condominium ownership where this regulation would allow the City to be notified and correct the action, should an illegal condo conversion have occurred.
2. **Safety** – An inspection of the property confirms that the new condo units meet current safety code standards, ensuring the safety of residents and allowing for the upgrade of the City's building stock.
3. **Data Tracking** – Data on condo conversions can be important for tracking the availability of housing types in the City, informing the development of housing policy. Generally, rental

and condo units serve different segments of the housing market and being able to track the conversion of rental units to condos would aid in the City's overall ability to track the availability of rental housing and adjust policies as necessary to ensure a desirable supply.

The Finance Committee's question posed whether a condo conversion is just like any other sale or transfer of property in the City, or whether it is more like development in which there is a transformation of property requiring appropriate review and inspection by the City furthering legitimate public interests. Staff believes there are two primary reasons why condo conversion should be considered more like property development and less like a simple transfer of property ownership. First, unlike any other property transfer, with condo conversion there is a legal question as to whether the change in ownership type also constitutes a change in use, as in the accessory apartment scenario. Second, unlike the transfer of a single unit within a larger condominium property, the condo conversion represents the transfer of the entire building to multiple new owners with legal and physical interdependencies between the units based on a shared structure and commonly-owned areas. Safety issues in one unit or common area element can affect the entire property heightening the importance of a safety inspection at the time of the condo conversion to ensure that all standards are being met. There are many older multi-unit rental properties in the City that may not meet current standards that should be inspected before they are converted to condominium ownership where there will be multiple owners with varying degrees of attention to such health and safety issues within the individual units and shared spaces. Though the building is not new, the act of condo conversion is still a form of development in which a number of residential units will be made available for sale to numerous new owners and where a safety issue within one such unit could have significant ramifications for all other units in the structure. For the same reason as stated above, the existing Revised Ordinances of the City of Newton, Chapter 12, Section 12-1 requires that every time a rental apartment is vacated and whenever an existing building is converted to a condominium, it must be certified by the Commissioner of Health and Human Services before it can be reoccupied. Given this precedent, it would also be appropriate to address safety issues.

PROPOSED TEXT AMENDMENTS

1. Insert the following new Chapter 5, Section 22 into Chapter 5, Buildings, Article II, Inspectional Services Department. This creates a requirement for an inspection for Code compliance after condominium creation with associated fees and penalties.

Chapter 5, Section 22, Inspection of Condominiums

- (a) Purpose: The intent of this regulation is to ensure the health and safety of occupants in dwellings converted to condominium and to ensure compliance with applicable state and local codes, ordinances and regulations.
- (b) The provisions of this section shall apply to any structure which has been used in whole or in part for residential purposes, and which is converted to condominium after the effective date of this section.

- (c) Prior to or within forty-eight hours after the recording of a master deed under G.L. c. 183A in the registry of deeds, but in any event prior to the initial sale of the first unit, the owner or owners who create a condominium shall obtain from the commissioner of inspectional services a certificate of condominium inspection. The owner(s) shall apply for such certificate on such form as the commissioner may provide, shall list each unit, and shall provide a copy of the master deed. The application notice shall be accompanied by the inspection fee required in 5-22(f) below.
- (d) Within five (5) days after a completed application for condominium inspection is filed, the commissioner or his designee shall inspect the property and shall issue such certificate if he determines that the subject property and each subject unit therein is in compliance with applicable state and local codes, ordinances, and regulations.
- (e) The commissioner of inspectional services shall be responsible for enforcing the provisions of Section 5-22 and may issue orders, promulgate regulations, and create procedures necessary for achieving the purpose in 5-22(a).
- (f) The commissioner of inspectional services shall charge an inspection fee of one hundred dollars (\$100.00) per condominium unit in order to defray the city's costs of conducting inspections under this section.
- (g) Any owner who converts property in violation of section 5-22 or in violation of any order or regulation issued by the commissioner pursuant to section 5-22 shall be punished by a fine of not more than three hundred dollars. Each unit converted in violation of this section and each day of continued violation for each unit shall constitute a separate offense.
- (h) A certificate of condominium inspection shall be in addition to and not a replacement for any other regulatory requirement which may be applicable by law, ordinance, or regulation.

2. Insert the following into Chapter 17 Section 6, creating a new subsection (d) "Condominium Conversion," to levy the appropriate fee for the inspection required above in the proposed Section 5-22.

- a. "17-6(d) The fee for an inspection of a condominium as required in Section 5-22 shall be \$100 per unit."

NEXT STEPS

If the Zoning and Planning Committee agrees with the analysis provided by the Planning Department staff recommends referral of , petitions #95-11 and 102-11 back to the Finance Committee with a response to their question so that the Committee can review the proposed fee. If further consideration is necessary, staff requests the Zoning and Planning Committee define what additional data and analysis it may need to inform further discussion.